



**YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**COMES NOW**, Arabella PH 3201 LLC, 9201 Memorial Dr. LLC, 2727 Kirby 26L LLC, Texas REIT LLC, Ali Choudhri, and Shepherd-Huldy Development I, LLC (collectively as **“Counter-Plaintiff”** or **“Movant”**) and brings this motion to reconsider order denying motion to expunge the lis pendens (the **“Motion”**) filed by Counter-Defendants/Counter-Defendants John Quinlan, Omar Khawaja, And Osama Abdullatif (collectively as **“Counter-Defendants”**), concerning the following real properties (collectively as the **“Properties”**):

- 4521 San Felipe No. 3201, Houston, Texas 77027 – Arabella PH 3201, LLC
- 4401 Schurmier Rd, Houston, Texas 77048 – Memorial Glen Cove, LLC
- 3550 Charleston St, Houston, Texas 77021 – Memorial Glen Cove, LLC
- 2503 S. Shepard Dr, Houston, Texas 77019 - Shepherd-Huldy Development I, LLC
- 2421 S. Shepard Dr, Houston, Texas 77019 - Shepherd-Huldy Development I, LLC
- 2419 S. Shepard Dr, Houston, Texas 77019 - Shepherd-Huldy Development I, LLC
- 2502 Huldy St, Houston, Texas 77019 - Shepherd-Huldy Development I, LLC
- 2424 Huldy St, Houston, Texas 77019 - Shepherd-Huldy Development I, LLC
- 9201 Memorial Dr, Houston, Texas 77024 - 9201 Memorial Dr. LLC, a WY LLC
- 2727 Kirby 26L, Houston, Texas 77098 - 2727 Kirby 26L LLC, a Texas LLC
- 402 Terrace Dr, Houston, Texas 77007 - Memorial Glen Cove, LLC
- 207 Malone St, Houston, Texas 77007 - Memorial Glen Cove, LLC
- 5803 Blossom St, Houston, Texas 77007 - Memorial Glen Cove, LLC
- 6531 Rodrigo St, Houston, Texas 77007 - Memorial Glen Cove, LLC
- 8050 Westheimer Rd, Houston, Texas 77063 – Texas REIT, LLC
- 8098 Westheimer Rd, Houston, Texas 77063 – Texas REIT, LLC

**COUNTER-DEFENDANTS' NOTICES OF LIS PENDENS AND SUPPLEMENTAL  
NOTICES OF LIS PENDENS MUST BE EXPUNGED**

The notices of lis pendens filed by Counter-Defendants against each of the Properties on July 31, 2023 (together, the “**Notices**”)<sup>1</sup> and the Supplemental Notices of Lis Pendens (together, the “**Supplemental Notices**”)<sup>2</sup> filed on August 23, 2023 are baseless and must be expunged.

<sup>1</sup>See Exhibit A (Notice of Lis Pendens against 9201 Memorial Drive, Houston, Texas 77024 recorded under file number RP-2023-286290 in the Harris County real property records); Exhibit B (Notice of Lis Pendens against 2727 Kirby 26L, Houston, Texas 77098 recorded under file numbers RP-2023-286266 in the Harris County real property records); Exhibit C (Notice of Lis Pendens against 4521 San Felipe Street, Unit 3201, Houston, Texas 77027 recorded under file number RP-2023-285825 in the Harris County real property records); Exhibit D (Notice of Lis Pendens against 5803 Blossom St, Houston, Texas 77007 recorded under file number RP-2023-286306 in the Harris County real property records); Exhibit E (Notice of Lis Pendens against 3550 Charleston St, Houston, Texas 77021 recorded under file number RP-2023-286304 in the Harris County real property records); Exhibit F (Notice of Lis Pendens against 2424 Huldy St, Houston, Texas 77019 recorded under file number RP-2023-286256 in the Harris County real property records); Exhibit G (Notice of Lis Pendens against 2502 Huldy St, Houston, Texas 77019 recorded under file number RP-2023-286267 in the Harris County real property records); Exhibit H (Notice of Lis Pendens against 207 Malone St, Houston, Texas 77007 recorded under file number RP-2023-286302 in the Harris County real property records); Exhibit I (Notice of Lis Pendens against 402 Terrace Dr, Houston, Texas 77007 recorded under file number RP-2023-286303 in the Harris County real property records); Exhibit J (Notice of Lis Pendens against 6531 Rodrigo St, Houston, Texas 77007 recorded under file number RP-2023-286307 in the Harris County real property records); Exhibit K (Notice of Lis Pendens against 4401 Schurmier Rd, Houston, Texas 77048 recorded under file number RP-2023-286305 in the Harris County real property records); Exhibit L (Notice of Lis Pendens against 2421 S. Shepard Dr, Houston, Texas 77019 recorded under file number RP-2023-286230 in the Harris County real property records); Exhibit M (Notice of Lis Pendens against 2503 S. Shepard Dr, Houston, Texas 77019 recorded under file number RP-2023-285802 in the Harris County real property records); Exhibit N (Notice of Lis Pendens against 2419 S. Shepard Dr, Houston, Texas 77019 recorded under file number RP-2023-286211 in the Harris County real property records); Exhibit O (Notice of Lis Pendens against 8050 Westheimer Rd, Houston, Texas 77063 recorded under file number RP-2023-286308 in the Harris County real property records); Exhibit P (Notice of Lis Pendens against 8098 Westheimer Rd, Houston, Texas 77063 recorded under file number RP-2023-286309 in the Harris County real property records);

<sup>2</sup> See Exhibit A1 (Supplemental Notice of Lis Pendens against 9201 Memorial Drive, Houston, Texas 77024 recorded under file number RP-2023-322006 in the Harris County real property records); Exhibit B1 (Supplemental Notice of Lis Pendens against 2727 Kirby 26L, Houston, Texas 77098 recorded under file numbers RP-2023-322000 in the Harris County real property records); Exhibit C1 (Supplemental Notice of Lis Pendens against 4521 San Felipe Street, Unit 3201, Houston, Texas 77027 recorded under file number RP-2023-321984 in the Harris County real property records); Exhibit D1 (Supplemental Notice of Lis Pendens against 5803 Blossom St, Houston, Texas 77007 recorded under file number RP-2023-322011 in the Harris County real property records); Exhibit E1 (Supplemental Notice of Lis Pendens against 3550 Charleston St, Houston, Texas 77021 recorded under file number RP-2023-322021 in the Harris County real property records); Exhibit F1 (Supplemental Notice of Lis Pendens against 2424 Huldy St, Houston, Texas 77019 recorded under file number RP-2023-322007 in the Harris County real property records); Exhibit G1 (Supplemental Notice of Lis Pendens against 2502 Huldy St, Houston, Texas 77019 recorded under file number RP-2023-322001 in the Harris County real property records); Exhibit H1 (Supplemental Notice of Lis Pendens against 207 Malone St, Houston, Texas 77007 recorded under file number RP-2023-322042 in the Harris County real property records); Exhibit I1 (Supplemental Notice of Lis Pendens against 402 Terrace Dr, Houston, Texas 77007 recorded under file number RP-2023-322008 in the Harris County real property records); Exhibit J1 (Supplemental Notice of Lis Pendens against 6531 Rodrigo St, Houston, Texas 77007 recorded under file number RP-2023-322030 in the Harris County real property records); Exhibit K1 (Supplemental Notice of Lis Pendens against 4401 Schurmier Rd, Houston, Texas 77048 recorded under file number RP-2023-322031 in the Harris County real property records); Exhibit L1 (Supplemental Notice of Lis Pendens against 2421 S. Shepard Dr, Houston, Texas 77019 recorded under

## **SUMMARY**

On or about October 7, 2022, Counter-Plaintiff Houston Real Estate Property, LLC (individually as “**HREP**” or the “**Debtor**”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code initiating the above-captioned bankruptcy case (the “**Bankruptcy Case**”). The Bankruptcy Case was converted to Chapter 7 on March 8, 2023, and Randy Williams was appointed Trustee on March 9, 2023.

On or about August 1, 2023, Counter-Defendants filed its Original Complaint (the “**Complaint**”), initiating the above-captioned adversary proceeding seeking damages against Debtor for the following cause of actions: (1) fraudulent transfer, (2) fraud, (3) alter ego, and (4) joint enterprise liability. Counter-Plaintiffs filed a Motion for Expungement of Lis Pendens that was denied on October 25, 2023. However, on October 26, 2023, Counter-Defendants’ Complaint, was dismissed.

### **A. Counter-Defendants’ Original Complaint**

An Order dismissing the Counter-Defendants’ Original Complaint was entered on October 26, 2023. (Docket No.: 101). Counter-Defendants filed the various Notices of Lis Pendens against the Properties on July 31, 2023 and the Supplemental Notices on August 23, 2023. However, at this time, there is no pleading upon which the Counter-Defendants can rely upon to support their Lis Pendens, considering their Original Complaint has been dismissed. The dismissal of Counter-

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file number RP-2023-321996 in the Harris County real property records); Exhibit M1 (Supplemental Notice of Lis Pendens against 2503 S. Shepard Dr, Houston, Texas 77019 recorded under file number RP-2023-321997 in the Harris County real property records); Exhibit N1 (Supplemental Notice of Lis Pendens against 2419 S. Shepard Dr, Houston, Texas 77019 recorded under file number RP-2023-322010 in the Harris County real property records); Exhibit O1 (Supplemental Notice of Lis Pendens against 8050 Westheimer Rd, Houston, Texas 77063 recorded under file number RP-2023-322019 in the Harris County real property records); Exhibit P1 (Supplemental Notice of Lis Pendens against 8098 Westheimer Rd, Houston, Texas 77063 recorded under file number RP-2023-322023 in the Harris County real property records);

Defendants' Complaint leaves no basis, or justification, for the Notices or the Supplemental Notices, and both the Notices and Supplemental Notices should be expunged.

**EXPUNGEMENT IS REQUIRED**

Section 12.0071(c) of the Texas Property Code provides that “the court *shall* order the notice of lis pendens expunged if the court determines that (1) the pleading on which the notice is based does not contain a real property claim; (2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or (3) the person who filed the notice for record did not serve a copy of the notice on each party [to the action].” Tex. Prop. Code § 12.0071(c) (emphasis added). The statute is mandatory and requires expungement of the lis pendens if any of the foregoing conditions is not met. *Id.* Here, Counter-Defendants Complaint has been dismissed, which leaves no pleading in this matter on which the Notices or Supplemental Notices can be based.

**F.R.CIV.P 59(E) (INCORPORATED BY BANKRUPTCY RULE 9023)**

F.R.Civ.P 59(e) allows for alteration or amendment of a prior order to “prevent manifest injustice.” (In re Benjamin Moore Co., 309 F.3d 296 (5th Cir. 2002)). The Notices and Supplemental Notices of Lis Pendens are a cloud on the title of properties that are owned by non-Debtor entities. Failure to expunge the Notices and Supplemental Notices that continue to cloud the title to properties owned by non-Debtor entities, after the dismissal of the Counter-Defendant's Complaint, would create a manifest injustice against the Counter-Plaintiffs, who are non-Debtor entities. The Counter-Plaintiffs are unable to access the equity in, or obtain complete dominion and access to, their Properties as long as the Notices and Supplemental Notices are not expunged.

**F.R.CIV.P 60(B)(6) (INCORPORATED BY BANKRUPTCY RULE 9024)**

F.R.Civ.P 60(b)(6) provides that the court may relieve a party or its legal representative from a final judgment, order or proceeding for any other reason that justifies relief.

F.R.Civ.P 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case when relief is not warranted by the preceding clauses contained within F.R.Civ.P 60(b). *Balentine v. Thaler*, 626 F.3d 842, 846 (5th Cir. 2010), cert. denied, 564 U.S. 1006 (2011) (quoting *Batts v. Tow-Motor Forklife Co.*, 66 F.3d 743, 747 (5th Cir. 1995)); see *Guevara v. Davis*, 679 F. App'x 332, 334 (5th Cir.), cert. denied, 138 S. Ct. 554 (2017); *Boissier v. Katsur*, 676 F. App'x 260, 264 (5th Cir. 2017).

F.R.Civ.P 60(b) “is to be construed liberally to do substantial justice . . . [it] is broadly phrased and many of the itemized grounds are overlapping, freeing Courts to do justice in hard cases”. *Frew*, 780 F.3d at 327 (quoting *Johnson Waste Materials v. Marshall*, 611 F.2d 593, 600 (5th Cir. 1980))

The Counter-Plaintiffs believe that this adversary proceeding is the type of “hard case” contemplated by F.R.Civ.P 60(b) in general, and F.R.Civ.P 60(b)(6) in particular. However, the dismissal of the Complaint changes the landscape of the proceeding, in such a way that reconsideration of the prior order denying expungement of the Notices and Supplemental Notices is warranted, and the ultimate expungement of the Notices and Supplemental Notices is required.

FOR THESE REASONS, Counter-Plaintiffs would ask that this court reconsider its prior Order denying the Motion to Expunge, and enter an Order expunging the Notices, and Supplemental Notices, of Lis Pendens filed by the Counter-Defendants against Properties.

Respectfully Submitted,

/s/ James Q. Pope

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of Counter-Plaintiffs' Motion to Reconsider the Order Denying Motion to Expunge Notices of Lis Pendens and Supplemental Notices of Lis Pendens was served on November 7, 2023 to all interested parties by electronic delivery.

**23-03141 Notice was electronically mailed, via the court's ECF noticing system to:**

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/s/ James Q. Pope

James Q. Pope